Supreme Court, U.S.
FILED
OCT 17 2000
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(2)

No. 00-564

In The

Supreme Court of the United States

CHRISTIE ANN THOMAS and SCOTT FISHER,

Petitioners,

v.

GREGORY DICKEL, JOSEPH LEO and THE CITY OF DES MOINES, IOWA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The material facts in this case are undisputed. (Petitioners' App., p. 3). Two Des Moines police officers in a police car, Respondents Dickel and Leo, followed Petitioners for one or two blocks as Petitioner drove in an El Camino. (Petitioners' App., pp. 3, 13). Officer Dickel, the driver of the police car, could not see the shoulder harness pulled down across the Petitioners' bodies. (Petitioners' App., pp. 3, 13). Iowa law requires all front seat passengers to wear safety belts. (Petitioners' App., pp. 3, 13). Officer Dickel pulled the Petitioners over. (Petitioners' App., pp. 3, 13).

Syringes and needles were seen on the floor of the El Camino. (Petitioners' App., p. 13). Fisher, the driver of the El Camino, had no driver's license. (Petitioners' App., p. 13). The car and the Petitioners were searched. (Petitioners' App., p. 14). Marijuana was found in the car which belonged to Petitioner Fisher. Marijuana also was found on the person of Petitioner Thomas. Both Petitioners were given seatbelt tickets and arrested for possession of marijuana. (Petitioners' App., p. 15). Both were found guilty of the seatbelt violations in separate bench trials. (Petitioners' App., p. 15).

Officer Leo testified that he could see unfastened seatbelts hanging from the roof of the El Camino and this led him to believe that Petitioners were violating Iowa law. (Petitioners' App., p. 4). Officer Dickel correctly testified at Petitioner Thomas' trial that he could not see any evidence of a seatbelt being worn, which led him to believe the Petitioners were violating Iowa law. (Respondents' App., pp. A2, A3). Officer Dickel's testimony is

correct because the safety harnesses in an El Camino are anchored behind the seats, not to the roof of the car, and they cannot be seen from behind whether they are fastened or unfastened. (Petitioners' App., p. 5). Significantly, the Petitioners concede that Officer Dickel was trained to look for the harness to be pulled across the body as a means to identify seatbelt violations and they further admit that, "typically – in other cars this possibly could be easily observable from behind." (Petitioners' App., p. 20).

Later, upon an appeal[1] at which neither officer testified, the seatbelt convictions were overturned. (Petitioners' App., p. 15). The marijuana charges were dismissed. (Petitioners' App., p. 15). The Petitioner sued the officers and the City. (Petitioners' App., p. 3). The federal district court granted summary judgment in favor of the officers and the City. (Petitioners' App., pp. 13-21). The Eighth Circuit Court of Appeals affirmed. (Petitioners' App., pp. 2-12).

The petitioners have mischaracterized a number of material facts which are undisputed in the record.

First, the officers did not "assert that needles were on the floor in the backseat." (Petition, p. 2). This would be impossible, as an El Camino has no back seat. Rather, "Officer Dickel saw syringes and needles on the floor of

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[1] In Iowa, simple misdemeanor charges are tried in Associate District Court and can be appealed to the District Court. (Iowa Rules of Criminal Procedure 34, 54).

the El Camino, which based on his training and experience, he determined to be evidence of narcotics use." (Petitioners' App., p. 13).

Second, the Petitioners say that "Upon trial of the seatbelt charge, the state trial court dismissed the charge and specifically found that false testimony was given at the trial as to the reason for the stop." (Petition, p. 2). This statement represents several significant omissions by Petitioners that are at best careless and at worst misleading.

The true, undisputed facts are that the Petitioners had *separate* seatbelt trials. (Petitioners' App., p. 15). Officer Dickel testified at one trial, correctly, that he could not see a seatbelt, fastened or unfastened, and therefore concluded that Iowa's seatbelt law was being violated. (Respondents' App., pp. A2, A3). Officer Leo testified that he could see the unfastened seatbelt hanging from the roof. (Petitioners' App., p. 4). Both Petitioners initially were found guilty. (Petitioners' App., p. 15). The convictions were overturned by the Polk County District Court at an appellate proceeding where *neither* officer testified. (Petitioners' App., p. 15).

Thus, regardless of Officer Leo's testimony, probable cause existed for the initial stop because Officer Dickel, the driver of the police car, observed a possible violation of Iowa law when he pulled Petitioners over. (Petitioners' App. p. 13).

The Petitioners completely ignore the correct testimony of Officer Dickel – that he saw no shoulder harness at all – and focus exclusively on the testimony of Officer Leo. Petitioners refusal to acknowledge the existence of

Officer Dickel's correct testimony renders their entire argument a nullity.

In addition, Petitioners have misidentified a number of cases upon which they rely:

Delaware v. Crouse (sic), 440 U.S. 648 (1979), which appears on pages v, 6, 8, 9, 10, 12, 13 and 14 of their petition is really *Delaware v. Prouse*;

Reid v. Georgia, 488 (sic) U.S. 438 (1980), which appears on pages v and 11 of their petition is correctly cited as *Reid v. Georgia*, 448 U.S. 438 (1980);

United States v. Martinez-Fuerete (sic), 428 U.S. 543 (1976), which appears on page v of their petition is really *United States v. Martinez-Fuente*. *United States v. Martinez-Fuerte* (sic), 428 U.S. 543 (1976), which appears on pages 8, 12 and 13 of their petition, is also really *United States v. Martinez-Fuente*;

United States v. Skolow (sic), 409 (sic) U.S. 1 (1989), which appears on pages v, 10 and 11 of their petition is really *United States v. Sokolow*, 490 U.S. 1 (1989); and

Wren (sic) *v. United States*, 517 U.S. 806 (1996), which appears on page v of their petition, is really *Whren v. United States*.

REASONS FOR NOT GRANTING THE WRIT

I. THE EIGHTH CIRCUIT OPINION IN THIS CASE DOES NOT CONFLICT WITH *DELAWARE V. PROUSE*.

It is the law that "discretionary spot checks" of automobiles for the sole purpose of checking the driver's license and the vehicle's registration violate the Fourth Amendment to the U.S. Constitution. *Delaware v. Prouse*, 440 U.S. 648, 659-663 (1979). The Newcastle County (Delaware) patrolman who pulled over Mr. Prouse did so seemingly out of boredom and nothing more. The patrolman observed "neither traffic or equipment violations nor any suspicious activity." *Id.* at 440 U.S. 650. As the patrolman explained it, "I saw the car in the area and wasn't answering any complaints, so I decided to pull them off." *Id.* at 440 U.S. 650-51.

This Court held that such a stop for such a purpose (or, more accurately, such a non-purpose) is unreasonable under the Fourth Amendment "except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is unregistered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law." *Id.* at 440 U.S. 663.

In this case, both Petitioners were "otherwise subject to seizure" for violating Iowa's safety belt law, (Petitioners' App. pp. 3-5, 18-20) (Respondents' App., pp. A2, A3), making *Prouse* inapposite and Petitioners' reliance upon it misplaced.

II. THE EIGHTH CIRCUIT OPINION IN THIS CASE DOES NOT CONFLICT WITH *UNITED STATES V. SOKOLOW*.

It is ironic that Petitioners rest their hopes upon *United States v. Sokolow*, 490 U.S. 1 (1989). The irony exists because in *Sokolow* a search and seizure at an airport were *upheld* using a totality of the circumstances test to determine the probability of the existence of criminal conduct. *Id.* at 490 U.S. 7-12. All of the circumstances in this case yield a result similar to *Sokolow*. Officer Dickel could not see a seat belt either on or off the driver or the passenger in the El Camino and reasonably assumed that a violation of Iowa law was occurring. (Petitioners' App. pp. 3, 13) (Respondents App. pp. A2, A3).

Instead of crediting Officer Dickel's testimony, Petitioners here continue their unrelenting (and heretofore unsuccessful) attempt to get a court to focus on Officer Leo's testimony.[2] The fact of the matter is that Officer Leo's testimony occurred long after the search and seizure of Petitioners and his testimony does not form any part of the totality of the circumstances as they existed on the night when Petitioners were stopped and arrested.

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[2] Petitioners assume that Officer Leo's testimony is a perjurious lie. There is nothing in the record of this case to indicate the validity of such an assumption. Perjury is defined in Iowa as "knowingly" making a false statement under oath. *Iowa Code*, § 720.2 (1999). Thus, incorrect testimony as a result of a lapse of memory, mistake or confusion is not perjury.

CONCLUSION

Because the Respondent officers had an articulable suspicion that a crime was afoot and because that suspicion was reasonable in light of the totality of the circumstance, the decision of the Eighth Circuit Court of Appeals in this case is consistent with the common law of the United States and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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[3] On page 1 of the Appendix to their petition, Petitioners state that Mark Godwin presented argument on Respondents' behalf before the 8th Circuit. This is correct but incomplete. Gary Mattson argued for Officer Dickel and Fred Anderson argued for Officer Leo.

APPENDIX A

Cover Page

IN THE IOWA DISTRICT COURT FOR
POLK COUNTY OF POLK

CITY OF DES MOINES, Plaintiff, vs. CHRISTIE ANN THOMAS, Defendant.	)	CASE NO. DM 83051 TRANSCRIPT OF PROCEEDINGS

APPEARANCES

KATHARINE RAMSAY, Assistant City Attorney,

On behalf of City.

JOHN WELLMAN, Attorney at Law.

On behalf of Defendant.

The record was opened in the above cause in the Polk County District Court, Des Moines, Iowa, at 3:20 p.m., March 25, 1996, before the Honorable I. Joel Pasternak, Judge, presiding.

PAMELA A. DAY, CSR RMR
OFFICIAL COURT REPORTER
401 POLK COUNTY COURTHOUSE
DES MOINES, IA 50309

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* * *

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Q. Tell me how you observed the violations. What did you see?

A. We were traveling behind the motor vehicle. We observed that neither the passenger nor the driver was using a shoulder harness. If it's a normal occurrence if someone is using a shoulder harness, you can observe it as it is pulled across the body from the behind. The shoulder harness will show that it's pulled across their body. You can observe that from behind.

Q. You can't see through the seat, can you?

A. No. We can see through the back window.

Q. And if the shoulder harness is anchored up here, you can see the strap connected to the car somewhere over the shoulder?

A. That's correct.

Q. And then click down to the left-hand side?

A. That's correct.

Q. And so what you are saying you didn't see was the shoulder harness above the shoulder in neither the passenger or the driver?

A. that's correct.

* * *

Page 10, lines 21 to Page 11, line 3

Q. Okay. So the sole reason for stopping their truck was because you didn't see a shoulder strap from somewhere in the truck coming down over the shoulder?

A. That's correct.

Q. I want to make sure of that. And that would be the case from both the driver and the passenger?

A. That's correct. I did not observe a shoulder harness being used by either the driver or the passenger.

* * *

CERTIFICATE TO TRANSCRIPT

The undersigned, Official Court Reporter in and for the Fifth Judicial District of Iowa, which embraces the aforesaid county, hereby certifies:

That she acted as such reporter in the above entitled cause in the District Court of Iowa, before the judge stated in the title page attached to this transcript, and took down verbatim in computerized machine shorthand the proceedings had at said time and place.

That said shorthand notes were subsequently reduced to writing by her through use of computer aided transcription methods.

That the foregoing pages of typewritten matter are a full, true, and complete transcript of said shorthand notes so taken by her in said cause and that said transcript contains all of the proceedings had at the times therein shown.

Dated this 1st day of April, 1996.

/s/ _____
PAMELA A DAY CSR, RMR
Official Court Reporter
Fifth Judicial District

TRANSCRIPT ORDERED: 3-25-96
BY: JOHN WELLMAN
TRANSCRIPT DELIVERED: 4-1-96